IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Revision No. 159 of 2001
(Old No. 19/1999)

Shiv Dayal Singh Rawat
S/o Sri Mathura Singh Rawat
Proprietor M/s Garhwal Sweet & Coffee House,
Agency, Pauri Garhwal.

….. Defendant / Revisionist

Versus

Narendra Singh Bhandari
S/o late Shri Rati Ram Bhandari
Mohalla Agency, Pauri Garhwal.

….Plaintiff / Respondent

Mr. S.K. Posti, learned counsel for the revisionist.
Mr. H.C. Bisht, learned counsel for the respondent.

Hon. Prafulla C. Pant, J.

Heard

2) This revision is directed against the order dated 04.12.1998, whereby the application moved by the defendant – revisionist for setting side the direction dated 14.10.1998 to proceed the suit ex-parte, has been rejected.

3) It is argued by learned counsel for the defendant - revisionist that the ground mentioned in the application for setting aside the order directing to proceed ex-parte was that the defendant was out of the Station due to the illness of his wife, which was supported by affidavit filed before the trail court.

4) Learned counsel for the plaintiff – respondent states that he has no objection if the revision is allowed.

5) Perusal of the impugned order shows that no reason has been discussed in the order rejecting the application. Merely it is mentioned that the 'reasons insufficient' in the order sheet. The perusal of the record further shows that service on the defendant was by publication for appearing on the date fixed i.e. 14.10.1998. In the circumstances, the trial court has erred in law in not accepting the application for setting aside the direction to proceed the suit ex-parte.

6) In view of the above, the revision is allowed and the impugned orders dated 04.12.1998 is set aside and application for setting aside the direction to proceed the suit ex-parte is allowed. As such, the order dated 14.10.1998 is also set aside. The trial court is directed to proceed with the case and dispose of the case as expeditiously as possible. (The Stay Vacation Application No. 9145 of 2005 and Urgency application No. 1201 of 2006 also stand disposed of)

(Prafullla C. Pant, J.)

Dt: February 16, 2006.
H.Negi